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No. 85-321

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

HOWARD B. PETERSON, III,
Petitioner,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL; WILLIAM R. KOONTZ; WILLIAM G. MATHIS; DAVID B. COUCH; and ARTHUR R. MAGILL,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Should this Court reconsider its holding in *International Brotherhood of Electrical Workers v. Foust*, 442 U.S. 42 (1979) that punitive damages may not be awarded in a suit for breach of the duty of fair representation?

2. Where a court correctly holds that state law causes of action are preempted by federal labor law, may plaintiff proceed against employees who acted as agents and representatives of or conspired with a labor organization on those same state law causes of action?

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BRIEF FOR THE RESPONDENT IN OPPOSITION

STATUTES INVOLVED

Railway Labor Act §§ 2, 204, 45 U.S.C.A. §§ 152, 184 (1972) are reproduced in the Appendix attached hereto.

COUNTER STATEMENT OF THE CASE[1]

Petitioner, an airline pilot, was furloughed from Wien Air Alaska upon the consummation of a strike settle-

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[1] After several years of discovery, respondents sought summary judgment on the undisputed facts. Since the District Court dis-

ment agreement between Wien and respondent. Petition for Certiorari 3a, 25a [Hereinafter cited as "Pet."]. That agreement provided that strikebreakers would be furloughed to permit reinstatement of the strikers and barred retaliation against the former. (Pet. 4a).

In May, 1979, Piedmont Airlines hired petitioner, and he flew without incident until a Piedmont pilot learned in July, 1979 that petitioner had flown for Wien during the strike. (Pet. 3a). Petitioner contends that thereafter he was harassed by individual pilots, that respondent sponsored a "surreptitious slowdown" [2] to procure

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missed the suit as untimely, it made no factual findings. Petitioner's Statement contains numerous immaterial, false, and exaggerated assertions of fact, some of them taken from a pleading ordered stricken by the District Court and others nowhere supported in the record. Joint Appendix (filed in the court below) at 95-97 [hereinafter cited as "J.A."]. Many of these factual assertions are not properly before the Court. *See* Sup. Ct. R. 21.1(g). Rather than confuse matters by stating the facts as we believe they stand on the record made in discovery, we have based the text above upon the opinions of the courts below. Lest the Court be misled by petitioner's misstatements, however, we have summarized the relevant highlights of the evidence, or lack thereof, as adduced in three years of discovery, in the margin.

[2] The characterization is the District Court's. (Pet. 26a). No doubt it reflects the testimony of thirty Piedmont officials and employees, from the Chief Executive Officer on down, who testified unanimously that they were unaware of a slow-down and that Piedmont's "on-time" performance during the period in question was normal (hence the term "surreptitious").

Petitioner testified that an unidentified ticket agent told him that a slowdown was in effect. But Peterson admitted that he had no personal knowledge of a slowdown. (Peterson Dep. 83-84, 179, 197-198, 201-203). And the thousands of documents produced in discovery did not enable petitioner to demonstrate any difference between Piedmont's on time performance during the period in question in comparison to the same period in prior years. Since the District Court dismissed the proceeding on procedural grounds, it did not rule upon respondent's contention that the evidence supporting petitioner's "slowdown" allegation did not raise an issue of material fact under Fed. R. Civ. P. Rule 56(e). (*See* Pet. 3, 9a).

his discharge and that on or about August 2, 1979, Piedmont took him off active flight duty and told him to find other employment.[3] (Pet. 3a-4a, 25a-26a). Piedmont paid Peterson until one month after he began work for another airline ". . . at about twice his Piedmont salary." (Pet. 26a, 4a). While Piedmont employed petitioner he was covered by the carrier's collective bargaining agreement with respondent, but Piedmont had no individual contract of employment with him. (Pet. 3a n.1, 28a).[4] Eleven months after ". . . the date of his alleged termination, . . ." petitioner filed the complaint against Piedmont Airlines and respondent giving rise to this proceeding. (Pet. 4a). The complaint was dismissed as untimely by the District Court. That Court did not address respondents' showing that they were entitled to summary judgment on the merits.

Petitioner and Piedmont entered into a settlement agreement, and, on appeal, the court below reversed the District Court's timeliness ruling. Petitioner seeks *certiorari* from the Court of Appeals' additional rulings that, should petitioner prevail on remand, he would not be entitled to punitive damages and that his state law claims are preempted. The proceeding is now back before the District Court on Motion for Summary Judgment.

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[3] Petitioner contended that Piedmont discharged him, but the courts below made no finding on the point. *See* note 1, *supra*. Petitioner testified, however, that *he* called a Piedmont official to complain about pilot harassment, that Piedmont offered to find another job for him, and that he responded that he would be "happy" if Piedmont could get him a pilot's position on a "nonunion" airline and would ". . . hand in a letter of resignation . . . ." if Piedmont succeeded. (Peterson Dep. 76, 79, 89). He conceded that he did not protest his removal from flight status. (Peterson Dep., p. 145).

[4] The District Court found that ". . . North Carolina . . . is an employment at will state. . . . Therefore all Peterson's rights are to be found within the four corners of the CBA." (Pet. 28a, citations omitted).

SUMMARY OF ARGUMENT

The lower courts have uniformly followed the holding in *IBEW v. Foust*, 442 U.S. 42 (1979) that punitive damages may not be awarded for a breach of the duty of fair representation. Petitioner has advanced no reason why the doctrine of *stare decisis* should be disregarded here, and events since *Foust, supra*, was decided, if anything, add weight to the reasons advanced by this Court in announcing a "per se" rule. The instant case presents a poor vehicle for reconsidering *Foust* in any event, since neither court below found the facts, the parties disagree sharply over the facts this Court may consider, and the decision below is interlocutory.

The preemption question petitioner seeks to present was neither raised nor decided below and could not have been, given the state of the pleadings when petitioner appealed. In any event, that question has no substance.

The petition for *certiorari* should be denied.

ARGUMENT

THE PETITION SHOULD BE DENIED

I. The Rule Precluding Punitive Damage Awards In Fair Representation Suits Should Not Be Reconsidered

No extant decision cited by petitioner (or found by respondent) supports his assertion that the lower courts are "uncertain" about the availability of punitive damages in suits for breach of the duty of fair representation. As petitioner necessarily concedes, "The federal courts of appeals which have addressed the issue have uniformly held that [this] . . . Court established a *per se* rule barring punitive damages for any breach of the duty of fair representation." (Pet. 11). *See* authorities collected by the court below, Pet. 15a; *Lewis v. Local 100, Laborers*, 750 F.2d 1363, 1381 (7th Cir. 1984). Those courts have correctly read the Court's opinion in *IBEW*

v. Foust, 442 U.S. 42 (1979) as four concurring justices did, to announce a blanket rule. *See, e.g., Foust*, 442 U.S. at 53; *Quinn v. DiGiulian*, 739 F.2d 637, 647 (D.C. Cir. 1984).

The *Seritis* case (reproduced at Pet. 38a-60a) does not justify granting *certiorari*. The California Supreme Court's order directing that the District Court of Appeal's opinion not be officially reported (Pet. 62a) strips the lower court decision of any precedential value, Cal. R. of Ct. 976(b), and follows the California practice of ". . . expunging opinions which reach correct results by errant reasoning." Biggs, *Censoring The Law In California: Decertification Revisited*, 30 HASTINGS L.J. 1577, 1582 (1979). Presumably, the California Supreme Court recognized that the inferior tribunal had misread *Foust* but that the award of punitive damages could be sustained without regard to that error. Local 28 had engaged in and ratified its President's ". . . [intentional] infliction of emotional distress. . . ." (Pet. 46a, 51a), and that sufficed under local law and *Farmer v. Carpenters*, 430 U.S. 290 (1977), to sustain the $150,000 punitive award against the Local, as the inferior court had itself found. (Pet. 58a; *id.* at 46a, (citing *Farmer*, 430 U.S. 290 (1977)). Whatever "confusion" the lower court exhibited has been corrected by the California Supreme Court without depriving plaintiffs of their verdict or disregarding the decisions of this Court. That hardly warrants further review here.

Petitioner's remaining argument for reconsidering *Foust* fares no better. He contends that in order to sustain the punitive damage award under the Landrum-Griffin Act (Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. §§ 411-531 (1982), [hereinafter cited as "LMRDA" or "Landrum-Griffin"]) in *Quinn v. DiGiulian*, 739 F.2d 637 (D.C. Cir. 1984), the D.C. Circuit ". . . went through some tortuous logic to distinguish the concerns of the *Foust* majority." (Pet. 13). But in de-

ciding *Foust* this Court expressly reserved the question whether punitive damage awards are appropriate for LMRDA violations because, the Court stated, that question ". . . involves different considerations. . . ." *Foust*, 442 U.S. at 47 n.9. Indeed it does.

First, the D.C. Circuit correctly recognized that duty of fair representation suits inescapably present conflicts between the collective interest of the union and the individual interest of the complainant, but that the court "need not worry" about this Court's concern that punitive damage awards in fair representation cases could ". . . tip the balance too far in the direction of the interests of the individual and thus hamper the union's ability to represent effectively the collective interests of the employees" in LMRDA cases. *Quinn*, 739 F.2d at 650-651. Those cases ". . . involve a conflict between the individual union member and the incumbent union leadership . . .", not between the individual and the collective interest. *Id.* Stated differently, if concern for punitive damages induced union officials to give dissidents greater free speech, due process, and electoral rights than the LMRDA requires, that would not prevent the union from representing the majority's interests.

Second, the *Quinn* court reasoned that successful fair representation plaintiffs usually confer no benefit upon the membership (which bears the burden of the damage awards). But this Court has held that successful LMRDA plaintiffs often benefit all union members, and that that fact should affect the courts' exercise of their remedial powers. *Hall v. Cole*, 412 U.S. 1, 8 (1984). Those distinctions are both analytically correct and substantively significant, and the result reached casts no doubt on the vitality of *Foust*.[5]

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[5] The *Quinn* court might have added that to the extent that damage awards may be paid by individual union officers (and their insurance carriers) in LMRDA cases, but must be borne by the Union alone in fair representation suits, the crippling effect of

Petitioner's contentions aside, *Foust* was decided but six years ago. This Court has authoritatively declared that ". . . any departure from the doctrine of *stare decisis* demands special justification." *Arizona v. Rumsey*, —— U.S. ——, ——, 104 S. Ct. 2305 at 2311 (1984), *quoted with approval in Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. ——, ——, 105 S. Ct. 1005, 1022 (Powell, J., dissenting). "Very weighty considerations underlie the principle that courts should not lightly overrule past decisions. Among these are . . . the importance of furthering fair and expeditious adjudication by eliminating the need to relitigate every relevant proposition in every case; and the necessity of maintaining public faith in the judiciary as a source of impersonal and reasoned judgments. The reasons for rejecting any established rule must always be weighed against these factors." *Moragne v. States Marine Lines*, 398 U.S. 375, 403 (1970).

This is not a case wherein upholding a challenged precedent ". . . could only breed uncertainty and unpredictability . . ." or where the precedent ". . . has been so rarely followed . . . ." that ". . . fresh examination is appropriate." *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 277 (1980). On the contrary, *Foust* has been followed "uniformly" (Pet. 11). Nor did *Foust* announce a rule that is ". . . in practice unworkable . . . ." or which ". . . lower courts have quite evidently sought to avoid dealing with . . . or have interpreted . . . with uncertainty." *Swift v. Wickham*, 382 U.S. 111, 124 (1965). Nor is this a case where "a development of major significance has intervened, making clear that the rule is out of keeping with the policies of modern American law." *Moragne v. United States Marine Lines*, 398 U.S. 375, 388 (1970).

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punitive damage awards on the unions' ability to represent any of its members might be substantially greater in the latter than in the former class of cases.

If anything, developments in the intervening years have added weight to the *Foust* Court's concern that going beyond a requirement that the members compensate an employee treated invidiously by their collective representative could, by depleting the union's treasury, prevent it from discharging its responsibilities to all the employees it represents. *Foust*, 441 U.S. at 47-48. Since 1979, many unionized industries have suffered severe setbacks and unemployment, and union membership has declined sharply. *See* BNA, 1984 Labor Relations Yearbook 197, 298. Union treasuries (especially local union treasuries that bear the brunt of fair representation litigation) are more vulnerable now than they were in 1979 when this Court, after carefully considering all the variables, struck the balance in favor of compensation and against punitive awards. In addition, since *Foust*, the caseload of the lower courts has risen to unprecedented, and some argue, unmanageable heights. *See, e.g.*, Vorenberg, *Spending A Life In The Law*, New York Times, Sept. 16, 1985, at A7, col. 2 ("courts overwhelmed" by caseloads). Reversing *Foust* will likely exacerbate that problem. The lure of punitive damage awards invites putative plaintiffs to litigate dubious claims and, by vastly upping the ante, makes settlement of meritorious claims difficult if not impossible. Thus, developments since this Court decided *Foust* argue for, rather than against, leaving it undisturbed. Certainly, petitioner has advanced no "special justification" (*Arizona v. Rumsey*, 104 S. Ct. 2305 at 2311) to depart from the doctrine of *stare decisis*.

Finally, this case is not a suitable vehicle for reconsidering *Foust*. The District Court dismissed the complaint on procedural grounds. (*See* Pet. 12a-13a, n. 14; J.A. 9). Consequently, this Court would have to decide the question presented on the basis of the lower courts' abstract characterizations of petitioner's allegations

("blacklist",[6] "surreptitious slowdown", "harassment"),[7] rather than upon concrete facts. Without such specific-

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[6] The courts below did not determine whether petitioner adduced sufficient proof of his allegation that ALPA "blacklisted" the Wien strikebreakers to withstand APA's motion for summary judgment. *See* note 1, *supra*. Assuming arguendo that any state could prohibit "blacklisting" without running headlong into the preemption doctrine, *but see Letter Carriers v. Austin*, 418 U.S. 264 (1974); 45 U.S.C.A. § 152 Fourth, the record contains neither evidence nor allegation that ALPA requested or obtained an agreement with any airline not to hire the strikebreakers or that ALPA circulated a "list of scabs." The only record evidence pertaining to such a list was that Wien Alaska urged other airlines to hire its former employees and distributed a list of striking pilots, and requested that their names be posted on the airlines' bulletin boards. (Fondy Dep. pp. 13-14, 25-27). One of petitioner's own witnesses testified, contrary to the dramatic assertion in petitioner's brief here, that several airlines whose employees ALPA represents had hired some of the scabs, and the record shows that some strikebreakers were not interested in working for a unionized airline. (*Compare* Pet. 4 *with* Horner Dep. 12-13, 30 *and* Peterson Dep. 89). Had the courts below reached the issue, therefore, they might well have found that petitioner had failed to raise a substantial issue of material fact with respect to his claim that ALPA "blacklisted" the Wien strikers. *See* Fed. R. Civ. P. 56.

The issue also appears to be immaterial. Petitioner does not claim that Piedmont or any other airline refused to hire him on account of the imaginary ALPA "blacklist", or that it injured him in any other way.

[7] The "harassment", according to petitioner, consisted principally of conversations wherein pilots told Peterson that they objected to his having crossed an ALPA picket line and would fly with him only because they had to; the refusal of some pilots to talk to him, presumably because he had been a strikebreaker; and an introduction of him as a "scab." (Peterson Dep. 54, 56, 57, 169-171). *Cf. Letter Carriers v. Austin*, 418 U.S. 264, 283 (1974) (calling employee a "scab" common in labor disputes and cannot be made subject of state defamation action suit). On two days, Captains allegedly did not extend to Peterson (who was a junior officer on probation) the customary, but purely discretionary, courtesy of allowing him to take over the controls. (Sharp Dep. 53-54, 130-134; Magill Dep. 33-35; Peterson Dep. 45, 51, 55). The record does not

ity, we submit, the Court will be hardpressed to formulate an appropriate standard and to give clear guidance to the lower courts, let alone to do justice to the litigants before it. In addition, given the parties' wide disagreement over the facts this Court may appropriately consider, see *supra*, p. 3 and notes 1-3, 6-7 hereto, the Court could readily find itself mired in tendentious disputes over the record. Furthermore, since the court below remanded the case for further proceedings, the decision is interlocutory. Except in extraordinary circumstances not presented here, the Court will not usually grant *certiorari* to review a non-final judgment. STERN & GRESSMAN, SUPREME COURT PRACTICE § 419 (5th Ed. 1978) (collecting cases). *Certiorari* should be denied.

II. The Determination That Petitioner's State Law Claims Are Preempted Does Not Raise An Issue Warranting Review

The Preemption issue petitioner tacks on to his argument (Pet. 14) does not warrant granting *certiorari*. The court below held as a factual matter that the ". . . underlying dispute draws its basic character from ALPA's alleged violation of federal law," and that "the *state law claims, in both substance and relief, are identical to the federal claim.*" (Pet. 20a) (Emphasis added); *Id.*, at 21a. (As a factual matter, Peterson can recover on state law claims only if he establishes violation of federal law). This Court has authoritatively declared that state claims are "unquestionably" preempted in such circumstances. *Sears, Roebuck & Co. v.*

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show that Peterson's not having operated the controls on those occasions had any impact on his compensation or other employment rights. Peterson made no claim that anyone threatened him with or subjected him to any personal injury or material damage, and that many of the pilots "remained friendly" to him and "didn't seem to care that much" about his having been a strikebreaker. (*See* Peterson Dep. 142-143, 165-71). Witnesses controverted Peterson's version of these events, of course.

San Diego County District Council of Carpenters, 436 U.S. 180, 202 (1978). Apparently, petitioner does not seriously challenge that holding with respect to ALPA,[8] presumably because he recognizes that Piedmont pilots, like most airline pilots, regularly fly into and over many states, and that it would be fatal to the basic purposes of the Railway Labor Act if each such state's law had to be consulted whenever a claim of union induced job discrimination was raised. Instead, he contends that the preemption principle should not extend to his fellow employees and that he should be permitted to proceed independently against them under state law.

That contention was not presented to the courts below and therefore cannot properly be presented here. *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 37 (1976); *Shelley v. Kraemer*, 334 U.S. 1, 8-9 (1948); *Ladrey v. Commission on Licensure*, 261 F.2d 68, 71, *cert. denied*, 358 U.S. 920 (1958) (alternative ground) (collecting cases). In addition, the individual respondents are not included in the enumeration of "Parties" in the Third Amended Complaint. The First Amended Complaint, though probably irrelevant,[9] alleges with respect to two of the individual respondents that "Acting as the agent,

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[8] *See* Pet. 14, 27a omitting from Appendix, presumably as irrelevant, the District Court's preemption determination. *See also Andrews v. Louisville & Nashville Railroad*, 406 U.S. 320, 323 (1972) ("minor disputes" governed by federal law); *Railroad Trainmen v. Terminal Co.*, 394 U.S. 369, 380-382 (1970) ("major disputes" governed by federal law); Pet. 18a-22a ("significant overlap" of federal and state claims here precludes application of state law); *Id.*, 18a (collecting authorities). *Compare Allis-Chalmers v. Lueck*, 105 S. Ct. 1904, 1911 (1985) (rights created by labor contract governed by federal, not state law) *and Bowen v. United States Postal Service*, 459 U.S. 212, 224 (1983) (semble) *with* Pet. 3a (alleging interference with contract).

[9] *See* 3 Moore's, Federal Practice, Par. 15.08[7] (complete amended pleading that does not refer to prior pleading supersedes it).

representative and servant of defendant ALPA, defendant . . . instigated, directed, and participated in the conspiracy to injure the plaintiff." (J.A. 19-22). The other two individual respondents, that document alleged, are ". . . employed by Piedmont as an airline Captain and actively participated in the conspiracy to injure the plaintiff." (J.A. 20).[10] Given the state of the pleadings, the lower courts could not properly have ruled that petitioner could litigate state law claims preempted as to ALPA against the individual respondents, even if petitioner had raised the point, since petitioner alleged no separate misconduct by the individual respondents.

In any event, the argument is wholly devoid of merit. It presupposes a distinction that cannot withstand analysis. If a state may not forbid or remedy conduct when a union engages in it lest "paramount federal policies of nationwide import" be frustrated, *Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 382 (1969), it may not do so indirectly by imposing sanctions upon individuals who support, act on behalf of, or assist the union by engaging in the same conduct ". . . in the context of [the same] . . . labor dispute." (Pet. 15); *cf.* Railway Labor Act Sec. 2, Fourth, 45 U.S.C.A. § 152, Fourth (1972) (carrier not to "interfere in any way" or "in any way question" right of employees to assist in organizing union). Were that the law, plaintiffs could by the simple expedient of suing individuals rather than their union, license states to sanction conduct that Congress intended to protect or leave unregulated and could enable the states to fashion their own remedial schemes for misconduct that Congress intended to remedy solely by means of federal law. Thus, petitioner seeks by a transparent device to do away with the preemption doctrine entirely. *Compare Machinists v. Wisconsin Em-*

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[10] The Second Amended Complaint was ordered stricken. (J.A. 95-97).

ployment Relations Commission, 427 U.S. 132 (1976); *Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969); *Allis-Chalmers v. Lueck*, 105 S. Ct. 1904, 1911 (1985).

Faced with facts like those here, the lower courts have repeatedly held that the federal cause of action is exclusive and preempts state law claims against individuals and employers. *See, e.g., Ramsey v. Signal Delivery Service, Inc.*, 631 F.2d 1210 (5th Cir. 1980); *Choate v. Louisville & Nashville Railroad Co.*, 715 F.2d 369 (7th Cir. 1983); *Magnuson v. Burlington Northern, Inc.*, 576 F.2d 1367 (9th Cir. 1978), *cert. denied*, 439 U.S. 930 (1978).[11] Petitioner has cited no conflicting decisions or any other reason why the question is worthy of consideration by this Court. It is not.

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[11] In a closely related context, this Court has held that where federal labor law provides a cause of action against unions that same law precludes damage awards against individual employees for peacefully engaging in the same misconduct. *Complete Auto Transit, Inc. v. Reis*, 451 U.S. 401 (1981); *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238 (1962). Federal labor policy, this Court ruled, stands firmly against a repetition of the *Danbury Hatters* case wherein union members lost their homes because they, rather than their union, were sued under the anti-trust laws for engaging in an unlawful boycott. *Atkinson v. Sinclair Refining Co.*, 370 U.S. at 246-248; *Complete Auto Transit, Inc. v. Reis*, 451 U.S. 401, 413-417. That federal labor policy would be eviscerated if, as petitioner would have it, individual employees could be held liable under state law for a cause of action that is "identical" (Pet. 20a) to a federal cause of action that may be brought exclusively against their union and which, if proved, would afford plaintiff complete relief.

CONCLUSION

For the reasons set out above, respondents respectfully request that the petition for *certiorari* be denied.

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APPENDIX

Railway Labor Act §§ 2, 204, 45 U.S.C.A. §§ 152, 184 (1972) in relevant part provide as follows:

§ 152. General duties—Duty of carriers and employees to settle disputes

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Consideration of disputes by representatives

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Designation of representatives

Third. Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as

their representatives of those who or which are not employees of the carrier.

Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Agreements to join or not to join labor organizations forbidden

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

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§ 184. System, group, or regional boards of adjustment

The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on April 10, 1936 before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of sections 181 to 188 of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system,

group, or regional boards of adjustment, under the authority of section 153 of this title.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in sections 151 to 163 and 181 to 188 of this title shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of sections 181 to 188 of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.